City Team Media Sdn Bhd & Ors v Tan Sri Datuk Nadraja a/l Ratnam

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCVC)(W)-427–02 OF 2018
LAU BEE LAN, HADHARIAH SYED ISMAIL AND MOHD SOFIAN JJCA
24 JANUARY 2022

Tort — Defamation — Allegation of corruption — Appellants published articles and caricature in newspaper portraying that respondent misappropriated temple funds — Respondent sued appellants for defamation — Appellants raised defences of justification, qualified privilege, and freedom of speech — High Court found in favour of respondent — Whether publications were not defamatory of respondent — Whether allegations were justified — Whether appellants were entitled to defence of qualified privilege — Whether quantum was excessive

The respondent as the chairman of the board of management and the executive committee of the Sri Maha Mariamman Temple Charity ('Dhevasthanam') had sued the appellants for defamation premised on the publication of an article and a caricature dated 4 June 2015 and an article dated 16 July 2015 ('the publications') in a newspaper known as the *Tamil Malar*. It ought to be noted that the publications were made based on an originating summons and affidavit in support filed by one Manoharan Malayalam ('MM') against the respondent. The appellants were sued in their respective capacities as the publisher, managing director and editor and journalist of the *Tamil Malar*. The gist of the publications, inter alia, portrayed that the respondent had misappropriated the temple funds. The respondent contended that the publications were untrue, had defamed him, had injured his reputation and integrity, and were actuated by malice. The appellants admitted that the publications referred to the respondent, but they denied that the words used in the publications were defamatory of the respondent. The appellant raised the defences of justification, qualified privilege, and freedom of speech under art 10 of the Federal Constitution. At the end of the trial, the High Court found in favour of the respondent and allowed the respondent's application for injunction and damages against the appellants. The court ordered the appellants to pay general damages, aggravated damages, and exemplary damages to the respondent. In the present appeal, the appellants raised the following grounds of appeal: (a) the publications were not defamatory of the respondent; (b) the allegations were justified; (c) the appellants were entitled to the defence of qualified privilege; and (d) the quantum was excessive.

Held, dismissing the appeal on liability and affirming the High Court's decision on liability; and setting aside the High Court's order on damages and substituting it with award of general damages with costs of RM10,000:

(1) It was trite that the test whether the words complained of in the publications were defamatory of the respondent was whether such words were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower him in the right-thinking members of society generally. The court found that the High Court judge had applied the correct test and had arrived at the correct conclusion in paras 32–34 of his judgment. On the meaning of the publications, the court agreed with the High Court judge that the publications were defamatory of the respondent. Thus, there was no good reason for the court to disturb the finding of fact made by the High Court judge. Accordingly, the first ground was a non-starter and must failed (see paras 34–35).

(2) It was without doubt that the publications strongly and forcefully bore an imputation of guilt on the respondent ie that the respondent had misappropriated the temple funds. Therefore, to succeed on the defence of justification or truth, the appellants must prove the respondent had misappropriated the temple funds. This, the appellants had failed to do. The particulars in support of the defence of justification as pleaded in paras 8, 9, 12, 18 and 22–24 of the amended statement of defece merely repeated MM's originating summons and his affidavit in support. It was trite law that repeating someone else's libelous statements could not form a defence and offended the repetition rule. The High Court judge in para 39 of his judgment found that the appellants failed to prove truth of the defamatory imputation of the publications. Therefore, justification as a defence was rejected by the High Court. The court in the present appeal agreed with the High Court, hence, this ground of appeal also failed (see paras 39 & 42).

(3) It was not in the public interest for the appellants to publish an unproven and unsubstantiated one-sided allegation which was pending adjudication before a court. To do so would result in not only the public being misinformed but also invite the public to discuss MM suit which was against the sub judice rule. When litigation was pending and actively in suit, the law must not allow 'trial by newspaper' or other medium other than the courts of law. For these reasons, the court agreed with the High Court judge that there was no social or moral duty on the appellants to publish the impugned publications and there was no corresponding interest on the public to read the same. Therefore, qualified privilege was not applicable. In addition, the appellants could not avail themselves the

defence of 'reportage' because the appellants were not impartial in their reporting (see paras 53–54). A

(4) Malice would arise in situation where the appellants were motivated by feelings of resentment, spite, or ill will towards the respondent. Malice could be inferred from the factors intrinsic and extrinsic to the impugned publications. Considering both the intrinsic and extrinsic factors, the appellants had willfully and maliciously published the unsubstantiated allegations contained in the impugned publications in a sensational manner with the intention to discredit the respondent, to show that he was an immoral person, someone who should not be trusted and ineligible to hold the post of chairman of the Dhevasthanam. The publications were done without any regard to the truthfulness or falsity of the impugned publications and without any honest belief as to the truth of its contents. The appellants' conduct in siding MM's story without caring to verify whether the story was true or false clearly evinced the presence of malice on the part of the appellants in publishing the impugned publications. As malice was proven, the defence of qualified privilege was defeated (see paras 55–58). B C D

(5) The court agreed with the appellants that the global award for general damages, exemplary damages and aggravated damages was erroneous. There was no basis for the High Court judge to award exemplary damages together with aggravated damages (see paras 59–60). E

[Bahasa Malaysia summary

Responden selaku pengerusi lembaga pengurusan dan jawatankuasa eksekutif Badan Amal Kuil Sri Maha Mariamman ('Dhevasthanam') telah menyaman perayu-perayu atas tuduhan memfitnah berdasarkan penerbitan artikel dan karikatur bertarikh 4 Jun 2015 dan artikel bertarikh 16 Julai 2015 ('penerbitan tersebut') dalam akhbar yang dikenali sebagai *Tamil Malar*. Perlu diingatkan bahawa penerbitan tersebut dibuat berdasarkan saman pemula dan afidavit sokongan yang difailkan oleh seorang Manoharan Malayalam ('MM') terhadap responden. Perayu-perayu telah disaman atas kapasiti masing-masing sebagai penerbit, pengarah urusan dan editor dan wartawan *Tamil Malar*. Intisari penerbitan tersebut, antara lain, menggambarkan bahawa responden telah menyalahgunakan dana kuil. Responden berhujah bahawa penerbitan tersebut tidak benar, telah memfitnahnya, telah merosakkan reputasi dan integritinya, dan dibuat dengan niat jahat. Perayu-perayu mengakui bahawa penerbitan tersebut merujuk kepada responden, tetapi mereka menafikan bahawa perkataan yang digunakan dalam penerbitan tersebut memfitnah responden. Perayu-perayu membangkitkan pembelaan justifikasi, perlindungan bersyarat, dan kebebasan bersuara di bawah perkara 10 Perlembagaan Persekutuan. Pada akhir perbicaraan, Mahkamah Tinggi memihak kepada responden dan membenarkan permohonan responden untuk injunksi dan ganti rugi terhadap perayu-perayu. Mahkamah F G H I

memerintahkan perayu membayar ganti rugi am, ganti rugi teruk dan ganti rugi teladan kepada responden. Dalam rayuan ini, perayu-perayu membangkitkan alasan-alasan rayuan berikut: (a) penerbitan tersebut tidak memfitnah responden; (b) dakwaan tersebut berasas; (c) perayu-perayu berhak mendapat pembelaan perlindungan bersyarat; dan (d) kuantum adalah berlebihan.

Diputuskan, menolak rayuan berkenaan dengan kebersalahan dan mengesahkan keputusan Mahkamah Tinggi berkenaan kebersalahan; dan mengenepikan perintah Mahkamah Tinggi berkenaan ganti rugi dan menggantikannya dengan award ganti ruti am dengan kos sebanyak RM10,000:

(1) Telah menjadi undang-undang yang mantap bahawa ujian sama ada perkataan yang diadukan dalam penerbitan tersebut memfitnah responden adalah sama ada perkataan tersebut dirasakan akan mendedahkannya kepada kebencian, kejian atau penghinaan di dalam fikiran seseorang yang munasabah atau akan cenderung untuk merendahkannya secara am di dalam ahli masyarakat yang berfikiran betul. Mahkamah mendapati hakim Mahkamah Tinggi telah menggunakan ujian yang betul dan telah mencapai kesimpulan yang betul dalam perenggan 32–34 penghakimannya. Mengenai maksud penerbitan tersebut, mahkamah bersetuju dengan hakim Mahkamah Tinggi bahawa penerbitan tersebut telah memfitnah responden. Justeru, tiada alasan kukuh untuk mahkamah mengganggu dapatan fakta yang dibuat oleh hakim Mahkamah Tinggi. Sehubungan itu, alasan pertama tidak menjadi isu dan mesti gagal (lihat perenggan 34–35).

(2) Tidak dapat dinafikan bahawa penerbitan tersebut secara kuat dan tegas menimbulkan tuduhan kebersalahan ke atas responden iaitu responden telah menyalahgunakan dana kuil. Oleh itu, untuk menjayakan pembelaan justifikasi atau kebenaran, perayu-perayu mesti membuktikan responden telah menyalahgunakan wang kuil. Ini, perayu telah gagal buktikan. Butir-butir yang menyokong pembelaan justifikasi seperti yang dirayu dalam perenggan 8, 9, 12, 18 dan 22–24 pernyataan pembelaan yang dipinda hanya mengulangi saman pemula MM dan afidavit sokongannya. Sudah menjadi undang-undang yang mantap bahawa mengulangi kenyataan fitnah orang lain tidak boleh membentuk pembelaan dan melanggar peraturan pengulangan. Hakim Mahkamah Tinggi dalam perenggan 39 penghakimannya mendapati perayu gagal membuktikan kebenaran tuduhan fitnah di dalam penerbitan tersebut. Oleh itu, justifikasi sebagai pembelaan telah ditolak oleh Mahkamah Tinggi. Mahkamah dalam rayuan ini bersetuju dengan Mahkamah Tinggi, justeru alasan rayuan ini juga gagal (lihat perenggan 39 & 42).

(3) Adalah bukan menjadi kepentingan awam bagi perayu untuk

menerbitkan dakwaan berat sebelah yang tidak terbukti dan tidak berasas yang sedang menunggu penghakiman di hadapan mahkamah. Tindakan sedemikian bukan sahaja akan menyebabkan orang ramai disalahmaklumkan tetapi juga mengundang orang ramai untuk membincangkan saman MM yang mana ini bertentangan dengan peraturan sub judice. Apabila litigasi belum selesai dan masih aktif dalam perbicaraan, undang-undang tidak boleh membenarkan 'perbicaraan melalui akhbar' atau media lain selain mahkamah undang-undang. Atas sebab-sebab ini, mahkamah bersetuju dengan hakim Mahkamah Tinggi bahawa tiada kewajipan sosial atau moral ke atas perayu-perayu untuk menerbitkan penerbitan yang dipertikaikan dan tiada kepentingan yang sama terhadap orang ramai untuk membaca perkara tersebut. Oleh itu, perlindungan bersyarat tidak terpakai. Di samping itu, perayu-perayu tidak dapat menggunakan pembelaan 'pelaporan' kerana perayu berat sebelah dalam pelaporan mereka (lihat perenggan 53–54).

(4) Niat jahat akan timbul dalam keadaan di mana perayu didorong oleh perasaan dendam, benci atau sakit hati terhadap responden. Niat jahat boleh disimpulkan daripada faktor intrinsik dan ekstrinsik kepada penerbitan yang dipertikaikan. Mempertimbangkan kedua-dua faktor intrinsik dan ekstrinsik, perayu-perayu telah dengan sengaja dan berniat jahat menerbitkan dakwaan tidak berasas yang terkandung dalam penerbitan yang disangkal tersebut secara sensasi dengan niat untuk menjatuhkan maruah responden, untuk menunjukkan bahawa dia seorang yang tidak bermoral, seseorang yang tidak boleh dipercayai dan tidak layak untuk memegang jawatan pengerusi Dhevasthanam. Penerbitan tersebut dilakukan tanpa mengambil kira kebenaran atau kepalsuan penerbitan yang disangkal tersebut dan tanpa apa-apa kepercayaan yang jujur tentang kebenaran kandungannya. Tindakan perayu-perayu menyebelahi cerita MM tanpa mengambil berat untuk mengesahkan sama ada cerita tersebut benar atau palsu jelas menunjukkan wujudnya niat jahat di pihak perayu-perayu dalam menerbitkan penerbitan yang disangkal tersebut. Memandangkan niat jahat terbukti maka pembelaan perlindungan bersyarat telah dikalahkan (lihat perenggan 55–58).

(5) Mahkamah bersetuju dengan perayu-perayu bahawa award global untuk ganti rugi am, ganti rugi teladan dan ganti rugi teruk adalah salah. Tiada asas bagi hakim Mahkamah Tinggi untuk memberikan ganti rugi teladan bersama dengan ganti rugi teruk (lihat perenggan 59–60).]

Cases referred to

Attorney General v Times Newspapers Ltd [1973] 3 All ER 54, HL (refd)
Abdul Rahman Talib v Seenivasagam & Anor [1965] 1 MLJ 142 (refd)
Adam v Ward [1917] AC 309, HL (refd)
Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315, HC (refd)

Badrul Zaman PS Md Zakariah v Jabatan Penyiaran Radio dan Televisyen Malaysia & Ors and other cases [2009] 7 CLJ 285, HC (refd)
Chew Peng Cheng v Anthony Teo Tiao Gin [2008] 5 MLJ 577, HC (refd)
Dato Annas bin Khatib Jaafar v Datuk Manja Ismail & Ors [2011] 8 MLJ 747, HC (refd)
Dato' Seri Anwar Ibrahim v Dato' Seri Dr Mahathir Mohamad [2001] 2 MLJ 65, FC (refd)
Dato' Seri Anwar bin Ibrahim v Dato' Seri Dr Mahathir bin Mohamad [2001] 1 MLJ 305, CA (refd)
Horrocks v Lowe [1974] 1 All ER 662, HL (refd)
Rubber Improvement Ltd v Daily Telegraph Ltd [1964] AC 234, HL (refd)
Rajagopal v Rajan [1972] 1 MLJ 45; [1971] 1 LNS 117, FC (refd)
Reynolds v Times Newspapers Ltd and others [1999] 4 All ER 609, HL (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya' Kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393, HC (refd)

Legislation referred to

Defamation Act 1957 s 8
Federal Constitution art 10

Appeal from: Civil Suit No 23 NCVC-59–08 of 2015 (High Court, Kuala Lumpur)

Arun Kasi (Jermal Ganesan and Malar with him) (Arun Kasi & Co) for the appellant.
Prem Ramachandran (Roobini Stephanie with him) (Kumar Partnership) for the respondent.

Hadhariah Syed Ismail JCA (delivering judgment of the court):

INTRODUCTION

[1] The appeal by the appellants (the first, third and fourth defendant) is against the decision of the High Court given on 26 January 2018, allowing the respondent's (the plaintiff) defamation claim. The prayer sought for are damages and injunction.

[2] Originally, the respondent had two causes of action against the appellants, namely defamation and conspiracy to injure the respondent. The claim for conspiracy to injure the respondent was dismissed by the High Court. There is no cross-appeal by the respondent. Therefore, this judgment is confined to the defamation claim.

[3] The claim in defamation was premised on the publication of three documents in the Tamil newspaper known as *Tamil Malar*, namely:

(a) an article dated 4 June 2015 (first article); A

(b) a caricature dated 4 June 2015 (caricature); and

(c) an article dated 16 July 2015 (second article) ('the publications').

[4] The appellants were sued in their respective capacities as the publisher, managing director and editor and journalist of the *Tamil Malar*. The suit was also filed against the printer of *Tamil Malar* (the second defendant), but was withdrawn by the respondent before the trial started. B

[5] Based on paras 7–8 and 12–14 of the statement of agreed facts (encl 15 pp 260–264), the appellants admitted that the publications refer to the respondent and that it was the appellants who published the publications. C

[6] Consequently, at the trial, the respondent only need to prove that the publications contained defamatory imputation. D

[7] The appellants denied that the words used in the publications were defamatory of the respondent. The defenses raised are justification, qualified privilege and freedom of speech under art 10 of the Federal Constitution. E

[8] After the trial, the High Court found in favour of the respondent and make the following orders:

(a) the appellants were restrained from, inter alia,writing, facilitating and publishing and/or causing to be written or published the defamatory words complained of in the publications; F

(b) the first appellant (first defendant) to pay to the respondent general damages, aggravated damages and exemplary damages in the sum of RM300,000; G

(c) the second appellant (third defendant) to pay to the respondent general damages, aggravated damages and exemplary damages in the sum of RM200,000; H

(d) the third appellant (fourth defendant) to pay to the respondent general damages, aggravated damages and exemplary damages in the sum of RM70,000; and

(e) the appellants to pay costs of RM220,000 to the respondent subject to allocator. I

A BRIEF BACKGROUND FACTS

[9] The respondent is the Chairman of the Board of Management and the Executive Committee of the Sri Maha Mariamman Temple Charity (Dhevasthanam) for the past 22 years (since 1992). As Chairman, he is also a member of the Board of Management and the Executive Committee.

[10] By order of court dated 28 November 1930 ('1930 Order'), the Dhevasthanam was constituted as a religious charitable trust comprising: (i) the Sri Subramaniar Temple, Batu Caves; (ii) Sri Maha Mariamman Temple, High Street; and (iii) the Sri Ganesar Temple, Old Pudu Road, for the benefit of the Ubayakarars (worshipper cum donor) of the Mariamman Temple (Religious Trust).

[11] The 1930 Order also provided that the property and funds of the said trust were vested in the Trustees to be appointed and removed from time to time and to be managed and controlled by the Board of Management.

[12] By court order dated 25 May 1981 ('1981 Order'), a scheme for the management and regulation of the Dhevasthanam ('scheme') was approved and affirmed by court order dated 27 April 2017.

[13] As per the scheme, the sole prerogative of determining the management of the funds and affairs of the Dhevasthanam was vested in the Board of Management as follows:

(a) the Chairman elected by the Board of Management shall superintend the general administration of the affairs of the Dhevasthanam;

(b) all the moveable and immoveable endowments of the Dhevasthanam shall be vested in the trustees (comprising six members elected by the Board of Management) who shall hold the same upon trusts and shall dispose of and deal with them in accordance with the directions of the Board of Management; and

(c) every year, the Board of Management shall, with the assistance of the treasurer, auditors and trustees, present the audited accounts of the Charity for perusal and approval of the Board of Management.

[14] The first appellant is in the business of publishing newspaper known as *Tamil Malar*, a daily newspaper distributed in Malaysia.

[15] The second appellant was the Managing Director and Executive Editor of the *Tamil Malar*. He is also a director and shareholder of the first appellant. A

[16] The third appellant was a journalist employed by the first appellant.

[17] On 17 April 2015, a lawyer named Manoharan Malayalam ('MM') initiated an Originating Summons No 24–23–04 of 2015 at the Kuala Lumpur High Court against the respondent (ROA *Jld* 3A p 1900). B

[18] Vide the said originating summons, MM claims for, inter alia, the following two reliefs: C

(a) that the respondent who has been the Chairman and Executive Committee of Devasthanam for 30 years be expelled forthwith; and

(b) that the respondent including his wife and all their children declare their assets. D

[19] In his affidavit in support of the originating summons, MM made, inter alia, the following allegations against the respondent: E

(a) 'responden telah bertindak mentadbir Kuil Dhevasthanam seolah-olah beliau mentadbir harta persendirian beliau, menyalahgunakan kuasanya dan bertindak secara kuku besi';

(b) 'responden yang telah menjadi Pengerusi dan Ahli Lembaga Pengurusan Kuil Hindu Mariamman selama lebih kurang 30 tahun harus dengan serta merta dilucutkan daripada terus memegang jawatan Pengerusi'; F

(c) 'satu aduan telah dibuat oleh seorang orang awam bernama Murali a/l Subramaniam kepada Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) mengenai perbuatan salah guna kuasa dan pecah amanah oleh responden;' G

(d) 'responden dan keluarganya hidup mewah dan tinggal di satu rumah bungalow yang besar bernilai berjuta ringgit, mempunyai beberapa lagi rumah dan kereta yang mahal walhal responden sebelum memegang jawatan sebagai Pengerusi dan/atau Ahli Jawatankuasa dan/atau Ahli Lembaga Pengurusan Kuil Hindu Mariamman, hanya merupakan seorang pembaca meter dengan Jabatan Bekalan Air'; and H

(e) 'responden telah didapati bersalah oleh Mahkamah Sesyen Kuala Lumpur pada 27.2.1998 untuk kesalahan di bawah s 409 Kanun Keseksaan dan telah dihukum penjara selama 21 bulan bagi tiga pertuduhan pecah amanah jenayah. Atas rayuan oleh responden, Mahkamah Tinggi telah mengenepikan keputusan Mahkamah Sesyen. Pendakwa Raya kemudiannya telah membuat rayuan ke Mahkamah I

Rayuan terhadap keputusan Mahkamah Tinggi. Tetapi, rayuan tersebut telah ditarik balik oleh pendakwa raya'.

[20] After case management of the originating summons, MM makes a press statement, explaining the gist of his case to the reporters. The press statement was reported by the appellants in the daily newspaper, *Tamil Malar*.

[21] On 9 November 2016, the Kuala Lumpur High Court struck out MM's originating summons on the ground it did not disclose a reasonable cause of action and is an abuse of the court process. This striking out is confirmed by MM (SD5) when cross-examined by the respondent's counsel at the trial.

[22] We now move on to the publications.

First article dated 4 June 2015

[23] On the front page of *Tamil Malar* dated 4 June 2015, under article titled (translation into Bahasa Malaysia — 'Harta ini adalah pemberian Murugan: Tiada pihak yang berhak untuk bertanya soalan'), the appellants wrote and published the following words:

(a) on p 1 of *Tamil Malar* dated 4 June 2015:

> Satu tuntutan telah difailkan oleh Peguam Manoharan terhadap Tan Sri Nadraja, Pengerusi Kuil Sri Subramaniyar Batu Caves atas penyalahgunaan dana kuil dimana beliau menggunakan pendapatan kuil untuk menambahkan harta benda beliau ...

(b) on p 3 of *Tamil Malar* dated 4 June 2015 (Translation into Bahasa Malaysia — 'Harta ini adalah pemberian Murugan: bertanya soalan ...'):

> Daripada pembaca meter ke jutawan.
>
> Nadraja adalah seorang pembaca meter biasa di Jabatan Bekalan Air (JBA). Kini beliau telah menaiktarafkan hidupnya menjadi seorang jutawan kerana beliau telah menyalahgunakan harta kuil. Harta benda kuil telah dimiliki oleh beliau kata Manoharan apabila berjumpa dengan wartawan setelah sessi mahkamah. Nadraja memiliki harta yang tidak terhad dan Manoharan menamakan beberapa hartanya.
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> 1. Swiss Garden Hotel, Madras. Kedua-dua anak Nadarajah iaitu Sivakumardan Navamani adalah pemilik bersama.
> 2. Dipercayai terdapat 19 harta benda termasuk yang di Taman Bolton, sebuah rumah kedai perniagaan dengan 2 bahagian.
> 3. Nadarajah juga Pengarah Divya Cafe yang berada berhampiran dengan Kuil Batu Caves.

4. Beliau juga pemilik kedai 'Easy 2 Shop' yang berada dekat dengan Kuil Batu Caves.

5. Semasa perayaan Thaipusam beliau juga telah menggunakan kereta Hyundai Starrex bernilai RM160,000.00 untuk kegunaan diri dan keluarganya.

6. Beliau juga memiliki sebuah Mercedez Benz baru.

Selain daripada itu, mengikut satu pencarian yang dibuat dengan Pendaftaran Ekonomi didapati Nadraja dan V Ramasamy Vadivelu yang dipercayai anak beliau dan juga juru akaun yang setia yang telah lama berkhidmat dengan Nadraja merupakan rakan kongsi sebuah Syarikat Rina Jaya Sdn Bhd yang bernilai RM50juta. Selain daripada itu, perkarangan Batu Caves juga digunakan untuk menjalankan perniagaan bawang yang diimport daripada India'

(c) on p 3 of *Tamil Malar* dated 4 June 2015 (translation into Bahasa Malaysia — Saya adalah seorang 'Kaki Lima' — Tan Sri Nadraja):

Semasa perbicaraan kes hal harta benda yang melibatkan Pengerusi Kuil Batu Caves, Tan Sri Nadraja, beliau telah diancam oleh Tan Sri Nadraja, di mana beliau telah melafazkan kata-kata, 'kamu tidak kenal saya, saya adalah seorang kaki lima'.

Beliau berkata, Tan Sri Nadraja berkelakuan tidak senonoh setelah beliau ditegur kerana menyalahgunakan duit kuil untuk kepentingan diri dan keluarganya bukan untuk kepentingan tuhan ataupun masyarakat.

Pada suatu ketika dahulu dana yang dikumpul demi pembangunan kuil, 50% nya digunakan untuk kepentingan kuil dan bakinya 50% nya digunakan untuk kepentingan masyarakat India yang berpendapatan rendah. Tetapi kini 100% dana dalam genggaman pihak pengurusan kuil.

Apabila tindakan sebegini disoal, maka mereka ditindas dengan kekerasan, kata beliau.

[24] At para 9 of the amended statement of claim, the respondent contended that the words complained of in the first article in their natural and ordinary meaning mean:

(a) 'plaintif melesapkan atau menggelapkan wang yang diderma oleh orang ramai kepada Amanah Amal Keagamaan';

(b) 'plaintif menggunakan wang yang dilesapkan dan digelapkan kepunyaan Amanah Amal Keagamaan untuk mengkayakan dirinya dengan memperoleh hartanah untuknya dan ahli-ahli keluarganya';

(c) 'plaintif mendakwa dia berhak secara peribadi kepada wang kepunyaan Amanah Amal Keagamaan';

(d) 'plaintif tidak perlu bertanggungjawab kepada sesiapa jua berkaitan dengan penggunaan wang kepunyaan Amanah Amal Keagamaan';

(e) 'plaintif telah menukar harta kepunyaan Amanah Amal Keagamaan menjadi harta peribadinya dan oleh itu telah menipu orang ramai';

(f) 'plaintif telah mengumpul kekayaan yang banyak melampaui keupayaan pekerjaannya sebelum itu sebagai pembaca meter JBA dengan melesapkan dan menggelapkan wang kepunyaan Amanah Amal Keagamaan';

(g) 'plaintif telah mengumpul dan memperolehi bilangan hartanah yang tidak terkira';

(h) 'plaintif telah menyalahgunakan jawatan Pengerusi Lembaga Pengurusan dan Jawatankuasa Eksekutif Amanah Amal Keagamaan dengan memiliki dan mengendalikan perniagaan peribadi atau keluarga di dalam Kompleks Kuil Batu Caves khususnya 'Divya Cafe', dan 'Easy 2 Shop";

(i) 'plaintif telah menggunakan wang yang dilesapkan dan digelapkan kepunyaan Amanah Amal Keagamaan untuk membeli atau memperolehi Swiss Garden Hotel di Madras India yang kini kononnya dipunyai oleh anak lelaki dan anak perempuannya';

(j) 'plaintif telah menggunakan wang yang dilesapkan dan digelapkan kepunyaan Amanah Amal Keagamaan untuk membeli dan memiliki 19 hartanah termasuk satu di Taman Bolton, sebuah rumah kedai dengan 2 bahagian';

(k) 'plaintif telah mendaftarkan atau menyebabkan didaftarkan dalam namanya sendiri satu kenderaan motor Hyundai Starex bernilai RM160,000 yang dibeli untuk Amanah Amal Keagamaan';

(l) 'plaintif telah menyalahgunakan kenderaan motor Hyundai Starex tersebut untuk kegunaan peribadi dan keluarganya semasa perayaan Thaipusam';

(m) 'plaintif telah menggunakan wang yang dilesapkan dan digelapkan kepunyaan Amanah Amal Keagamaan untuk membeli dan memiliki satu Mercedez Benz yang baru';

(n) 'plaintif bersama-sama dengan V Ramasamy adalah rakan kongsi dalam Rina Jaya Sdn Bhd, sebuah syarikat bernilai RM50,000,000. Plaintif telah menyalahgunakan Kompleks Kuil Batu Caves untuk meneruskan perniagaannya di bawah Rina Jaya Sdn Bhd untuk mengimport bawang dari India';

(o) 'plaintif bersifat samseng dan tidak akan teragak-agak untuk mengugut atau menakut-nakutkan sesiapa jua yang berani mempersoalkan penyalahgunaan jawatannya sebagai Pengerusi Lembaga Pengurusan dan Jawatankuasa Eksekutif';

(p) 'bahawa plaintif telah menyalahgunakan kuasanya sebagai Pengerusi Amanah Amal Keagamaan untuk mengkayakan dirinya dengan wang kepunyaan Amanah Amal Keagamaan';

(q) 'bahawa plaintif orang yang tidak jujur dan telah melakukan pecah amanah jenayah'; dan

(r) 'bahawa plaintif tidak layak memegang jawatan Pengerusi Lembaga Pengurusan dan Jawatankuasa Eksekutif Amanah Amal Keagamaan'.

Caricature dated 4 June 2015

[25] The coloured caricature of the respondent was published on the front page of *Tamil Malar* accompanied with the following caption (translation into Bahasa Malaysia — 'Harta ini adalah pemberian Murugan: Tiada pihak yang berhak untuk bertanya soalan'). The caricature gave the impression that monies flow out from a donation box at the foot of Lord Muruga Statue into the respondent's pocket.

[26] At paras 13–14 of the amended statement of claim, the respondent contended that the caption and the caricature, in their natural and ordinary meaning or by innuendo mean:

(a) 'bahawa plaintif mendakwa dia berhak secara peribadi kepada wang kepunyaan Amanah Amal Keagamaan';

(b) 'bahawa plaintif tidak perlu bertanggungjawab kepada sesiapa jua berkaitan dengan penggunaan wang kepunyaan Amanah Amal Keagamaan';

(c) 'bahawa plaintif telah melesapkan dan menggelapkan dan terus melesapkan dan menggelapkan wang yang diderma oleh orang ramai kepada Amanah Amal Keagamaan';

(d) 'bahawa plaintif telah membeli kenderaan mewah dan bangunan-bangunan menggunakan wang yang dilesapkan dan digelapkan daripada Amanah Amal Keagamaan';

(e) 'bahawa plaintif telah membiayai dan terus membiayai, perniagaan bawang plaintif menggunakan wang yang dilesapkan dan digelapkan daripada Amanah Amal Keagamaan';

(f) 'bahawa plaintif telah menyalahgunakan kuasanya sebagai Pengerusi Amanah Amal Keagamaan untuk mengkayakan dirinya sendiri dengan wang kepunyaan Amanah Amal Keagamaan';

(g) 'bahawa plaintif adalah orang yang tidak jujur dan telah melakukan pecah amanah jenayah'; and

(h) 'bahawa plaintif tidak layak memegang jawatan Pengerusi Lembaga Pengurusan dan Jawatankuasa Eksekutif Amanah Amal Keagamaan'.

Second article dated 16 July 2015

[27] On the front page of *Tamil Malar* dated 16 July 2015, under an article titled (translation into Bahasa Malaysia — 'Dalam kes Nadarajah saya akan bertindak sendiri'), the appellants wrote and published the following words:

> Selama 30 tahun ini Tan Sri Nadraja telah menjawat jawatan sebagai pengerusi Sri Maha Mariamman Dhevasthanam, Kuala Lumpur. Sementara itu anaknya Sivakumar adalah seorang Pemegang Amanah. Kedua-duanya mesti dipecatkan dari jawatan masing-masing.
>
> Menurut Perintah Mahkamah bertarikh 1981, satu perintah telah diperolehi di mana seorang Pengerusi dan Pemegang Amanah boleh memegang jawatannya sampai seumur hidup.
>
> Dalam perintah tersebut ada tertera bahawa kuil perlu berfungsi menghulurkan sumbangan kewangan kepada bidang keagamaan, kebudayaan dan pendidikan.
>
> Tetapi di bawah pengurusan Nadarajah beliau gagal berbuat demikian dan wang orang awam telah ditipu.
>
> Sejumlah 40 soalan telah dikemukakan. Dalam hujahnya beliau berkata pengurusan kuil tidak boleh diletak di bawah satu keluarga.'

[28] At para 19 of the amended statement of claim, the respondent contended that the words complained of in the second article in their natural and ordinary meaning mean:

(a) 'Perintah Mahkamah bertarikh tahun 1981 membenarkan plaintif memegang jawatan Pengerusi Lembaga Pengurusan dan Jawatankuasa Eksekutif sepanjang hayatnya';

(b) 'Dengan menggunakan mekanisme Perintah Mahkamah, plaintif telah kukuh dalam kedudukannya sebagai Pengerusi Lembaga Pengurusan dan Jawatankuasa Eksekutif sepanjang hayatnya';

(c) 'Perintah Mahkamah bertarikh tahun 1981 membenarkan Pemegang Amanah memegang jawatan Pemegang Amanah bagi Amanah Amal Keagamaan sepanjang hayatnya';

(d) 'Dengan menggunakan mekanisme Perintah Mahkamah, plaintif telah memastikan bahawa anak lelakinya kukuh dalam kedudukannya sebagai Pemegang Amanah bagi Amanah Amal Keagamaan sepanjang hayat anak lelakinya';

(e) 'Plaintif tidak layak memegang jawatan Pengerusi Lembaga Pengurusan Amanah Amal Keagamaan dan oleh itu mesti disingkirkan daripada jawatannya';

(f) 'Plaintif gagal memastikan bahawa Amanah Amal Keagamaan berfungsi sebagai pergerakan keagamaan, budaya, pendidikan kerana gagal menderma wang kepada mereka yang memerlukan';

(g) 'Plaintif telah menipu wang yang diderma oleh orang ramai kepada Amanah Amal Keagamaan';

(h) 'Plaintif mengamalkan nepotisme dalam pengurusan Amanah Amal Keagamaan. Plaintif telah menjadikan pengurusan Amanah Amal Keagamaan sebagai urusan keluarga dengan melantik anak lelakinya sebagai Pemegang Amanah';

(i) 'Bahawa plaintif telah menyalahgunakan kuasanya sebagai Pengerusi Amanah Amal Keagamaan untuk mengkayakan dirinya dengan wang kepunyaan Amanah Amal Keagamaan';

(j) 'Bahawa plaintif adalah seorang yang tidak jujur dan telah melakukan pecah amanah jenayah'; and

(k) 'Bahawa plaintif tidak layak memegang jawatan Pengerusi Lembaga Pengurusan dan Jawatankuasa Eksekutif Amanah Amal Keagamaan'.

[29] The respondent also contended that the publications were actuated by malice, the particulars of which was pleaded at para 24 of the amended statement of claim. The respondent further contended the publications were untrue, had defamed him and had injured his reputation and integrity as the Chairman of the Board of Management and Executive Committee of the Devasthanam.

GROUNDS OF APPEAL

[30] The appellants raised four points as follows:

(a) the publications were not defamatory of the respondent;

(b) the allegations are justified;

(c) the appellants are entitled to the defence of qualified privilege; and

(d) the quantum is excessive.

Meaning of the publications

[31] Learned counsel for the appellants submitted that whether a statement in an article is defamatory in its ordinary and natural meaning ought to be construed objectively taking into account the nature of the publication and the context of the statement within the publication. He cited *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315 *Dato Annas bin Khatib Jaafar v Datuk Manja Ismail & Ors* [2011] 8 MLJ 747.

[32] Based on the above cited cases, learned counsel submitted that the mere reporting of a legal case and the statements made by a litigant in relation to that case cannot tantamount to making a conclusion of the allegations made therein. It is submitted that the articles were in respect of a suit filed by MM which was already in public domain. It is submitted that the articles also stated that the respondent denies the allegations made against him and that he had filed an application to strike out the claim against him.

[33] In response, learned counsel for the respondent submitted that the learned trial judge was correct in his decision that the publications were defamatory of the respondent.

[34] We disagree with the appellants' submission. It is trite that the test whether the words complained of in the publications were defamatory of the respondent, was whether such words were calculated to expose him to hatred, redicule or contempt in the mind of a reasonable man or would tend to lower him in the right thinking members of society generally, (see *Tun Datuk Patinggi Haji Abdul-Rahman Ya' Kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393 p 394D).

[35] We find the learned trial judge had applied the correct test and had arrived at the correct conclusion in paras 32–34 of his judgment as follows:

> 32. Adakah penerbitan-penerbitan bersifat memfitnah iaitu telah merendahkan martabat dan kedudukan plaintif di dalam pemikiran orang yang waras dan munasabah atau samaada penerbitan tersebut telah mendedahkan plaintif kepada kebencian dan penghinaan orang ramai terhadapnya, samaada berdasarkan makna sebenar penerbitan tersebut atau berdasarkan makna sindiran. Di dalam membuat penilaian sedemikian, mahkamah perlu mengambil kira pandangan pembaca yang munasabah (*Choo Fook Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371) dan juga dari kacamata ahli masyarakat yang munasabah dan berfikiran waras secara umumnya (*Tun Datuk Patinggi Haji Abdul-Rahman Ya' Kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393).
>
> 33. Saya dapati penerbitan-penerbitan tersebut secara semulajadi dan secara sindiran (*innuendo*) memberi gambaran bahawa plaintif adalah seorang yang berkelakuan buruk seperti diplid di dalam paras 9, 13, 14 dan 19 pernyataan tuntutan terpinda. Dengan membaca penerbitan-penerbitan tersebut, pembaca

biasa akan merumuskan bahawa plaintif telah melakukan perbuatan yang tidak bermoral dan bertanggungjawab di dalam melaksanakan tugasnya sebagai pengerusi Dhevasthanam dengan menyalahguna kedudukan dan menggelapkan dana-dana yang dikutip dari orang ramai. Di dalam kedudukan tersebut, penerbitan-penerbitan ini akan merendahkan kedudukan dan martabat plaintif di dalam pandangan masyarakat.

34. Oleh itu, penerbitan-penerbitan ini secara semulajadinya dan secara sindiran telah merendahkan martabat plaintif di dalam kacamata masyarakat umum dan kesannya mendedahkan plaintif kepada pandangan serong, dibenci dan dihina oleh masyarakat. Plaintif tidak perlu membuktikan keseluruhan masyarakat akan mempunyai perasaan sedemikian terhadap plaintif. Apa yang penting dibuktikan oleh plaintif adalah secara munasabahnya masyarakat akan mempunyai perasaan sedemikian. Oleh itu, penerbitan-penerbitan tersebut berunsur fitnah terhadap plaintif.

35. On the meaning of the publications, we agree with the learned High Court judge that the publications were defamatory of the respondent. Thus, we see no good reason to disturb the finding of fact made by the trial judge. Accordingly, the first ground is a non starter and must fail.

Defence of justification

[36] Learned counsel for the appellants submitted that the allegations made by the appellants in the first and second article respectively that the respondent had become a millionaire by abusing the property of the religious trust and that the court order had allowed a chairman and the trustee remain in power for life is true in substance and fact. This is so because the appellants contended they have adduced sufficient evidence which show that:

(a) the respondent who was a meter reader is now living a life beyond his means;

(b) the respondent's attempted proof of income only showed nominal amount and they were of transactions happened about 25 years ago; and

(c) all the businesses of the respondent or his son or daughter were all well placed in the properties belonging to the trust.

[37] The defence of justification is provided for in s 8 of the Defamation Act 1957 and it reads as follows:

Section 8 Justification

In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaing charges.

[38] In *Chew Peng Cheng v Anthony Teo Tiao Gin* [2008] 5 MLJ 577, the court held that:

> In a plea of justification, it is essential for the defendant to prove that (i) the defamatory imputation is true; (ii) justify the precise imputation complained of, and (iii) prove the truth of all the material statements in libel. However, it is not necessary to prove the truth of every word of the libel.

[39] It is without doubt that the publications strongly and forcefully bear an imputation of guilt on the respondent. That the respondent had misappropriated the temple funds. Therefore, to succeed on the defence of justification or truth, the appellants must prove the respondent had misappropriated the temple funds. This, we find the appellants have failed to do. We find the particulars in support of the defence of justification as pleaded in paras 8–9, 12, 18 and 22–24 of the amended statement of defence merely repeat MM's originating summons and his affidavit in support. It is trite law that repeating someone else's libelous statements cannot form a defence and offends the repetition rule.

[40] In *Gatley on Libel and Slander* (10th Ed) at p 850, para 27.10, the learned authors state:

> Further, 'there is a rule of general application in defamation (dubbed the repetition rule' ...) whereby a defendant who has repeated an allegation of a defamatory nature of the claimant can only succeed in justifying it by proving the truth of the underlying allegation — not merely the fact that the allegation has been made.

[41] In *Rubber Improvement Ltd v Daily Telegraph Ltd* [1964] AC 234 at p 260, Lord Reid held 'repeating someone else's libelous statement is just as bad as making the statement directly'.

[42] In para [39] of his judgment, the learned trial judge found that the appellants had failed to prove the truth of the defamatory imputation of the publications. Therefore, justification as a defence was rejected by the court. We are in agreement with the finding of the High Court. Accordingly, this ground also fail.

Defence of qualified privilege

[43] The appellants have pleaded the defence of qualified privilege under common law, particulars of which can be found at paras 25.1–20.19 of the amended defence.

[44] To establish the defence of qualified privilege, the appellants must show that there is a legal social or moral duty on their part to make or publish the statements and the recipient (the readers) has a corresponding interest or duty

to receive such communication (*Adam v Ward* [1917] AC 309, *Rajagopal v Rajan* [1972] 1 MLJ 45; [1971] 1 LNS 117). It was said in the case of *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142 that 'the reciprocity is essential'. The test is whether the person making and the person receiving the communication have a corresponding interest in the subject matter.

[45] In the case of *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315, it was held 'Where a defence of qualified privilege is set up, the burden lies on the defendant to prove that he made the statement honestly, and without any indirect or improper motive. Then, if he succeeds in establishing qualified privilege, the burden is shifted to the plaintiff to show actual or express malice which upon proof thereof, communication made under qualified privilege could no longer be regarded as privileged'.

[46] In *Reynolds v Times Newspapers Ltd and others* [1999] 4 All ER 609, the House of Lords gives recognition to the role of the news media in a democratic society. It is founded on two main principles: of publication in the public interest and responsible journalism, only then the defence of qualified privilege applies.

[47] In *Reynold*'s case, the House of Lords laid down the following non-exhaustive factors in considering whether the allegations made in the press attracted qualified privilege. These factors included: the seriousness of the allegation; the nature of the information and the extent to which the subject matter was a matter of public concern; the source of the information; the steps taken to verify the information; the status of the information; the urgency of the matter; whether comment had been sought from the plaintiff; whether the article contained the gist of the plaintiffs side of the story; the tone of the article and the circumstances of the publication, including the timing.

[48] Malaysian cases relating to the defence of qualified privilege which followed the approach in *Reynolds* can be found the case of *Dato Annas bin Khatib Jaafar v Datuk Manja Ismail & Ors* [2011] 8 MLJ 747. In *Badrul Zaman PS Md Zakariah v Jabatan Penyiaran Radio dan Televisyen Malaysia & Ors and other cases* [2009] 7 CLJ 285, the court recognised that there is a need to protect the news media so long as their reports are reasonable and accurate, that is the standard of responsible journalism. Once the defence of qualified privilege is established, it could be defeated only by proof of express malice on the part of the news media (see: *Dato' Seri Anwar Ibrahim v Dato' Seri Dr Mahathir Mohamad* [2001] 2 MLJ 65; and *Dato' Seri Anwar bin Ibrahim v Dato' Seri Dr Mahathir bin Mohamad* [2001] 1 MLJ 305).

[49] Coming back to the present case. Before us, the appellants submitted they could rely on the defence of qualified privilege based on the following facts:

(a) the makers of the statements, MM and Andiyappan were lawyers by profession;

(b) they made the press statements within the vicinity of the court;

(c) MM testified in court that his statements to the press were based on his sworn affidavit filed in court;

(d) the third appellant as a reporter was present and heard the statements. He testified in court that he was also shown the relevant pages of the affidavit;

(e) *Tamil Malar* being a national vernacular newspaper had the duty to report and it's readers had the right and interest to know about MM's suit and the matters surrounding it; and

(f) to deny the right to qualified privilege would be against public interest and public policy.

[50] The appellants further submitted there were no malice on their part based on the facts that:

(i) the said publications were not of the first or third appellant own story or feature article about the respondent as the Chairman of the Trust;

(ii) instead, they were purely news coverage of a Suit filed by MM and his statement about his case;

(iii) the news coverage on both occasions were in conjunction with the case management of MM's Suit;

(iv) the facts in (i) –(iii) above demonstrate that the publications were not pre-contrived or motivated by any ill motive to disparage the respondent; and

(v) the High Court also did not make any finding of malice against the appellants.

[51] In reply, learned counsel for the respondent submitted that there is no such moral or social duty to publish one sided unproven allegations pending adjudication before a court. Thus, qualified privilege is not applicable to the appellants.

[52] We notice that both the appellants and the respondent have submitted on each of the factors listed in *Reynold*'s case to support their respective argument. Having read the parties submission on this point, we agree with the

respondent that the impugned publications were published in the following circumstances:

(a) the allegations made against the respondent in the impugned publications are: theft; misappropriation of the Dhevasthanam's fundsand assets for personal use; embezzlement of monies donated by the public; criminal breach of trust nepotism and abuse of power. It is without doubt that the allegations are serious and criminal in nature;

(b) the second and third appellant admitted the allegations against the respondent were an unproven allegations by MM in his originating summons;

(c) MM (SD5) admitted that a number of his. allegations were sourced from an anonymous letter and some allegations cannot be substantiated with evidence. Despite this, he said there is no need to verify the allegations and mere belief is enough;

(d) the impugned publications do not contain the respondent's side of the story. As at the date of the second publication on 16 July 2015, the respondent has filed three affidavits in reply dated 15 May 2015, 9 June 2015 and 6 July 2015 respectively, denying all the allegations made against him. The appellants have deliberately omitted to make reference or mention any of the respondent's affidavits;

(e) the third appellant had admitted that he did not approach the respondent for clarification, explanation or denial;

(f) the third appellant had admitted that the tone of the impugned publications is one sided; and

(g) the third appellant had admitted that the main intention of publishing the caricature and caption is to sensationalise the story.

[53] Given the above circumstances, our view is, it is not in the public interest for the appellants to publish an unproven and unsubstantiated one sided allegations which is pending adjudication before a court. To do so would result in not only the public being misinformed but also invite the public to discuss MM Suit which is against the subjudice rule. When litigation is pending and actively in suit, the law must not allow 'trial by newspaper' or other medium other than the courts of law (*Attorney General v Times Newspapers Ltd* [1973] 3 All ER 54). For these reasons, we agree with the learned trial judge that there is no social or moral duty on the appellants to publish the impugned publications and there is no corresponding interest on the public to read the same. Therefore, qualified privilege is not applicable.

[54] We further find the appellants cannot avail themselves the defence of 'reportage' because the appellants were not impartial in their reporting. It is

clear that the appellants have favoured the unproven and unsubstantiated allegations of MM in the originating summons. It is also clear that the appellants willfully refused to verify the truth of the allegations.

[55] With regard to malice even though the learned trial judge did not make any finding on this point, we disagree with the appellants that there were no malice. Malice will arise in situation where the appellants are motivated by feelings of resentment, spite or ill will towards the respondent. Malice can be inferred from the factors intrinsic and extrinsic to the impugned publications (*Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142).

[56] In this case, the intrinsic factors would be:

(a) the language used by the appellants such as 'Murugan gave me the the property; No one has the right to question' and the allegation in the second article that the public funds had been swindled and that the Temple management is under one family; and

(b) the caricature depicting the respondent taking money from the temple's donation box to fund his business and luxury lifestyle. The caricature has been drawn in such a way that the allegations can be easily understood with a single glance.

[57] The extrinsic factors are

(a) it is without doubt that the appellants in writing, drawing, editing, publishing and printing the impugned publications did so with reckless or willful disregard for the truth. In *Horrocks v Lowe* [1974] 1 All ER 662 at p 150, Lord Devlin held:

> If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false.

(b) the impugned publications were published in a sensational manner. The caricature and caption and the second article were published on the front page in colour. The caricature was designed to capture the reader's 'attention' and can be further understood by those who do not read Tamil. SD3 admitted that the purpose of the caricature and caption was to sensationalise the story.

[58] Taking both intrinsic and extrinsic factors together, we agree with the respondent's submission that the appellants had willfully and maliciously published the unsubstantiated allegations contained in the impugned publications in a sensational manner with the intention to discredit the respondent, to show that he is an immoral person, someone who should not be trusted and ineligible to hold the post of Chairman of the Dhevasthanam. The

publications were done without any regard to the truthfulness or falsity of the impugned publications and Without any honest belief as to the truth of its contents. The appellants' conduct in siding MM's story without caring to verify whether the story is true or false clearly evinced the presence of malice on the part of the appellants in publishing the impugned publications. With malice is proven, defence of qualified privilege (which we find not applicable) is defeated.

DAMAGES

[59] The appellants submitted the global award for general damages, exemplary damages and aggravated damages was erroneous.

[60] We agree with the appellants. We are of the considered view that the learned High Court judge had erred in awarding a global award of general damages, exemplary damages and aggravated damages. We find there is no basis to award exemplary damages together with aggravated damages, in the circumstances, we set aside the order of the High Court in respect of damages and substitute the award with an award of general damages as follows:

(a) RM120,000 against the first appellant (first defendant);

(b) RM80,000 against the second appellant (third defendant); and

(c) RM40,000 against the third appellant (fourth defendant).

CONCLUSION

[61] On liability, we find there is no merit in the appeal. In our considered view, the learned High Court judge did not err in his finding that the two articles and caricature were defamatory of the respondent. We also find that the learned High Court judge did not err in his finding that the defences of justification and qualified privilege were not proven. In the premises, we dismiss the appeal on liability and affirm the learned High Court judge's decision dated 26 January 2018 on liability.

[62] On quantum, we set aside the order of the High Court on damages and substitute it with the award of general damages in the sum as specified in para 59 above.

[63] We also award cost of RM10,000 here to the respondent to be paid in the following apportionment:

(a) RM8,000 to be paid by the first and second appellant; and

(b) RM2,000 to be paid by the third appellant. Payment of cost is subject to allocator.

A *Appeal on liability dismissed and High Court's decision on liability affirmed; High Court's order on damages set aside and substituted with award of general damages with costs of RM10,000.*

Reported by Dzulqarnain Ab Fatar

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